

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of)	
)	
Nodak Mutual Insurance Company,)	
FEIN 45-0216631, and)	CONSENT ORDER
American West Insurance Company,)	
FEIN 45-0419793,)	CASE NO. CO-03-105
)	
Respondents.)	

Commissioner of Insurance Jim Poolman (hereinafter “Commissioner”) has determined as follows:

1. The Commissioner has authority in this matter pursuant to N.D. Cent. Code Title 26.1 and N.D. Cent. Code § 28-32-05.1.

2. Nodak Mutual Insurance Company, FEIN 45-0216631 (hereinafter “Nodak”), is a domestic insurance company licensed to do business in North Dakota pursuant to N.D. Cent. Code Chapter 26.1-12.

3. American West Insurance Company, FEIN 45-0419793 (hereinafter “American West”), is a domestic insurance company licensed to do business in North Dakota pursuant to N.D. Cent. Code Chapter 26.1-12.

4. The Commissioner has jurisdiction over the Respondents and the subject matter of this Consent Order is made in the public interest.

5. N.D. Cent. Code § 26.1-03-07 provides:

26.1-03-07. Annual statement to be filed. Every insurance company doing business in this state shall transmit to the commissioner, not later than March first of each year, a statement of

its condition and business for the year ending on the preceding December thirty-first. If March first falls on a Saturday or legal holiday, the statement is due on the next succeeding business day. A company organized under the law of any foreign country or province shall include in the statement only business transacted within the United States, and shall file a supplemental statement of business transacted without the United States not later than December first. The commissioner shall stamp the date of receipt on every statement. The commissioner may not accept the annual statement from any company if the statement was transmitted after the date designated in this section unless the statement is accompanied by the penalty prescribed by section 26.1-03-16.

6. N.D. Cent. Code § 26.1-03-09 provides:

26.1-03-09. Statements to be verified by specified officers - Duty of commissioner to distribute information. The annual statement must be verified by the signature and oath of the president or the vice president and of the secretary, the actuary, if a life insurance company, and the treasurer or corresponding person having charge of the accounts and finances of the insurance company, or by a majority of the members of the board of directors of the company. The commissioner shall arrange the information in the statements in a tabular form and annually print and distribute the information to the companies doing business in this state and to the legislative assembly.

7. Nodak filed annual statements for the years 2000, 2001, and 2002 under signature stamp of certain officers and directors. The statements were not “verified by the signature and oath” of the proper officers or a majority of the directors, as that phrase is construed by the Commissioner and thus not filed as required by N.D. Cent. Code §§ 26.1-03-07 and 26.1-03-09.

8. American West filed annual statements for the years 2001 and 2002, but the statements similarly were not verified by the signature and oath of the proper officers or a majority of the directors and thus not filed as required by N.D. Cent. Code §§ 26.1-03-07 and 26.1-03-09.

9. N.D. Cent. Code § 26.1-03-16 provides:

26.1-03-16. Penalty for not making statement. Any insurance company doing business in this state which neglects to make and file any statement in the manner and within the time prescribed in this chapter forfeits one hundred dollars for each day's

neglect, and upon notice by the commissioner to that effect, its authority to do new business ceases during the default. Any new business done by an insurance company after it has neglected to make a required statement is in violation of law.

10. Nodak and American West filed properly verified annual statements for 2002 on April 14, 2003, 30 days after March 1, 2003.

11. Nodak and American West filed properly verified annual statements for 2001 on April 21, 2003, 411 days after March 1, 2002.

12. Nodak filed a properly verified annual statement for 2000 on April 21, 2003, 776 days after March 1, 2001.

13. As a result of the above violations, the Commissioner believes Respondents are subject to a penalty for late filing for 1,642 days of \$164,200.

14. Although the annual reports were not properly signed prior to filing, the Company represents that the reports were reviewed and verified by the appropriate officers and were also audited by an outside accounting firm shortly after they were filed.

15. The content of the annual reports is currently under examination by North Dakota Insurance Department examiners to determine compliance with statutory requirements.

16. The Company responded promptly to correct the signature errors when they were brought to their attention and has agreed to amend its process in the future to require the review and verification process to be complete prior to filing the annual report with the Office of Insurance Commissioner.

17. It does not appear that policyholders suffered any damage or injury due to the signature error.

18. Respondent has agreed to an informal disposition and settlement of this matter, without a hearing, as provided under N.D. Cent. Code § 28-32-05.1.

19. For purposes of resolving this matter, without further administrative proceedings, Respondent and the Commissioner have agreed to enter the following Order:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent is assessed an administrative penalty in the amount of \$16,420 which shall be paid within fifteen (15) days of the execution of this Order.

2. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED this ____ day of _____, 2003.

Jim Poolman
Commissioner of Insurance
State of North Dakota

CONSENT TO ENTRY OF ORDER

The undersigned, _____, **on behalf of Nodak Mutual Insurance Company and American West Insurance Company**, states that he/she has read the foregoing Consent Order, that he/she knows and fully understands its contents and effect; that he/she has been advised of his/her right to be represented by legal counsel, his/her right to a hearing in this matter, his/her right to present evidence and arguments to the Commissioner, and his/her right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order he/she waives those rights in their entirety, and consents to entry of this Order by the Commissioner of Insurance. It is further expressly understood that this Order constitutes the entire

settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

DATED this _____ day of _____, 2003.

Nodak Mutual Insurance Company

By: _____
Name

Title

Subscribed and sworn to before me this _____ day of _____, 2003.

Notary Public

My Commission Expires:

DATED this _____ day of _____, 2003.

American West Insurance Company

By: _____
Name

Title

Subscribed and sworn to before me this _____ day of _____, 2003.

Notary Public

My commission expires: